

## **CHAPTER 29 PROCUREMENT POLICY**

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### **ARTICLE A. PROCUREMENT INVOLVING LOUISIANA COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS**

#### **Section 29.1 Code of conduct**

A. No employee, officer, or agent of the town shall participate in the selection or in the award or administration of a contract supported by Louisiana Community Development Block Grant (LCDBG) funds if a conflict of interest, real or apparent, would be involved. Such a conflict could arise if the employee, officer or agent; any member of his/her immediate family; his/her partner; or an organization which employs or is about to employ any of the above, has a financial or other interest in the firm selected for award.

B. No officer, employee, or agent of the town shall solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements, except where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.

C. Any alleged violation of these standards of conduct shall be referred to the town attorney. Where violations appear to have occurred, the offending employee, officer, or agent shall be subject to disciplinary action, including but not limited to dismissal or transfer. Where the violations or infraction appears to be criminal in nature, the matter may be referred to the appropriate official for criminal investigation and possible prosecution. (Motion adopted October 11, 1994)

#### **Section 29.2 Procurement procedures**

A. The director or supervisor of each department or agency of the town responsible for procurement of services, supplies, equipment, or construction obtained with LCDGB funds shall review all proposed procurement actions to avoid the purchase of unnecessary or duplicative items. Such reviews shall consider consolidation or breaking out to obtain a more economical purchase. When determined appropriate by the director or supervisor, an analysis to determine which approach would be the most economical shall be undertaken.

B. The town shall take affirmative steps to assure that small and minority firms and women-

owned business enterprises are solicited whenever they are potential qualified sources. The town shall also consider the feasibility of dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority firms and women's business enterprises. Where permitted by regulations, delivery schedules will be developed which will include participation by such businesses. Where possible, evaluation criteria will include a factor with an appropriate weight for these firms. In identifying small and minority business firms, the town may request the assistance of the Division of Minority/Women's Business Enterprise within the Department of Economic Development.

C. All prime contractors shall be required to take the affirmative steps described in the preceding subsection. The town shall assist the prime contractor whenever possible by providing copies of lists which identify qualified small and minority firms, women's business enterprises, and labor surplus area firms. (Motion adopted October 11, 1994)

### **Section 29.3 Selection procedures**

A. All procurement carried out with LCDBG funds, where the town is a direct party, shall be carried out in a manner that provides maximum free and open competition. Procurement procedures will not restrict or eliminate competition. The town shall not place unreasonable requirements on firms in order for them to qualify to do business. Nor will the town encourage or participate in noncompetitive practices among firms. The town is alert to organizational conflicts which would jeopardize the negotiation process and limit competition. The town will not require unnecessary experience or bonding requirements.

B. Pursuant to state law, all solicitations of offers shall incorporate a clear accurate description of the technical requirements for the material, service, or product to be procured. In competitive procurement, these descriptions shall not contain features which unduly limit competition. The description may include a statement of the qualitative nature of the material, product, or service and the minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications shall be avoided whenever possible. A "brand name or equal" description may be used to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.

C. All solicitations of offers shall clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids, proposals, or statements of qualifications.

D. Contracts shall be awarded only to responsible contractors/firms that possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such factors as the contractor's/firm's capacity, integrity, compliance with public policy, record of past performance, and financial and technical resources. (Motion adopted October 11, 1994)

### **Section 29.4 Method of procurement**

Direct procurement by the town shall be made by the following methods:

- (1) Small purchase procedures. Relatively simple, informal procurement procedures will

be used where the purchase of services, supplies, equipment, or other property, and cost of construction will not cost in the aggregate more than ten thousand (\$10,000) dollars except where further limited by state law or LCDBG policy. The procurement officer must obtain oral or written price or rate quotations from a minimum of three qualified sources. A written confirmation of the accepted offer shall be obtained and maintained in the files. Documentation on all quotations received, whether oral or written, must be made a part of the file.

(2) Competitive sealed bids/formal advertising.

- (a) Under this procedure, bids are publicly advertised. A firm fixed price contract (either lump sum or unit price) shall be awarded to the responsible bidder whose bid is lowest in price and which conforms to all the material terms and conditions of the advertisement for bids.
- (b) Competitive sealed bids can be used only when the following criteria are met:
  - (i) There are complete, adequate, and realistic specifications or purchase descriptions.
  - (ii) There are two (2) or more responsible bidders who are willing and able to compete effectively.
  - (iii) The procurement can be made on a firm fixed-price contract and selection of the successful bidder can appropriately be made principally on the basis of price.
- (c) When formal advertising is used, the following conditions shall be met:
  - (i) Bids shall be solicited from an adequate number of known suppliers at a sufficient time prior to the date set for the opening of the bid. The advertisement for bids shall be publicly advertised in accord with state law.
  - (ii) The advertisement for bids, including the specifications and pertinent attachments, shall clearly define the items or services needed in order for the bidders to properly respond to the advertisement.
  - (iii) All bids shall be opened publicly at the time and place specified in the advertisement for bids.
  - (iv) A firm fixed-price contract award shall be made by written notice to the lowest responsible bidder whose bid conforms to the advertisement for bids. Where specified in the bid documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts shall only be used to determine low bid when prior experience indicates that such discounts are generally taken.
  - (v) Notwithstanding the above, any or all bids may be rejected when there are sound documented business reasons in the best interest of the LCDBG Program.

(3) Competitive negotiation: request for proposals/qualification statements

- (a) This method may be used when formal advertising is not appropriate. Architectural, engineering, planning, consultant, and other services will normally be procured via competitive negotiation.
- (b) The following procedures will be used for competitive negotiation:
- (i) Requests for proposals or qualification statements must be advertised in the official journal and a newspaper in the Baton Rouge metropolitan area in accordance with the rules of the state's LCDBG Program. All reasonable submittals will be honored and entered into the competition.
  - (ii) The request for proposals or request for qualification statements shall identify all significant evaluation factors, including the importance that price or cost will play in the selection.
  - (iii) The board shall review all proposals and statements received and make a technical evaluation of each. This shall also include a written statement that identifies the basis upon which the selection was made.
  - (iv) Contract award will be made to the responsible offeror whose submission is deemed most appropriate to the town with consideration for price, qualifications, and other factors set by the local governing body. Unsuccessful offerors shall be notified within ten days of contract award. Documentation of notification shall be maintained in the contract selection file for the individual project.
  - (v) Following the review of the proposals/statements received, the most qualified competitor will be selected to enter into contract negotiation. This shall always include negotiation of price to insure cost reasonableness. At the conclusion of successful negotiation, the competitor shall be invited to enter into a contract. The selecting official's evaluation of candidates may include:
    - (A) Specialized experience and technical competence of the offeror and proposed personnel in connection with the type of services required and the complexity of the project.
    - (B) Past performance on contracts with the town, HUD, and other public and private clients, including such factors as cost control, quality of work, and ability to meet schedules.
    - (C) The ability of the offeror to handle the work, including specialized services, within the time frame established by taking into consideration the current/planned workload of the firm.
    - (D) Familiarity of the offeror with the types of problems applicable to the project.
    - (E) Avoidance of personal and organizational conflicts of interest prohibited under state law and town ordinance or policy.
    - (F) Compliance with the town's section 3 plan.

(4) Noncompetitive negotiation/sole source.

- (a) Noncompetitive negotiation shall be used when small purchase, formal advertising, or competitive negotiation procedures are not feasible. Noncompetitive negotiation will involve solicitations of a

proposal from only one source. This can also occur if solicitations under the competitive negotiation procedures results in only one proposal or qualification statement.

- (b) Noncompetitive negotiation shall only be used when all of the following criteria have been met:
  - (i) The item or service is available only from a single source.
  - (ii) It is determined that a public urgency or emergency exists and the urgency will not permit the delay beyond the time needed to employ one of the other three methods of procurement.
  - (iii) The state authorizes noncompetitive negotiation.
  - (iv) After solicitation of a number of sources, competition is determined to be inadequate.
  
- (c) Noncompetitive contracting may be considered in procurement where cost is not the primary factor. The methods of procurement shall be solicitation of proposals through advertisement or other means, review and evaluation of the proposal by predetermined criteria, and negotiation of a contract. Negotiation is to include consideration of cost to assure reasonableness. (Motion adopted October 11, 1994)

### **Section 29.5 Contract pricing**

A. Cost plus percentage of cost and percentage of construction cost methods of contracting must not be used. The town shall perform cost or pricing analysis in connection with every procurement action including contract modifications. Costs or prices based on estimated costs for LCDBG projects shall be allowed only to the extent that the costs incurred or the cost estimates included in negotiated prices are consistent with federal cost principals. Cost reimbursement, fixed price, per diem contracts, or a combination thereof may be utilized as appropriate.

B. A cost reimbursement type contract is most appropriate when the scope and extent of the work to be performed are not clearly defined. A cost reimbursement contract must clearly establish a cost ceiling which may not be exceeded without formally amending the contract, and must identify a fixed dollar profit which may not be increased unless there is a contract amendment which increases the scope of the work.

C. A fixed price contract is appropriate when the scope of work is very well defined and product oriented. A fixed price contract must establish a guaranteed price which may not increase unless there is a contract amendment that increases the scope of the work.

D. A per diem contract expected to exceed ten thousand (\$10,000) dollars will not be considered unless the town has determined that a cost reimbursable or fixed price contract is not appropriate. Cost and profit included in the per diem rate must specifically negotiated and shown separately in the proposal. The contract must clearly establish a ceiling price which may not be exceeded without formally amending the contract.

E. The town may use a multiplier type of compensation under either the cost reimbursement or fixed price contract. The multiplier and the portions of the multiplier applicable to

overhead and profit must be specifically negotiated and separately identified in the contract. (Motion adopted October 11, 1994)

### **Section 29.6 Procurement records**

The town clerk shall maintain records sufficient to detail the significant history of the procurement. The records shall include the following contract provisions and conditions:

- (1) Contracts other than small purchase shall contain provisions which allow for administrative, contractual, or legal remedies if contractors violate or breach contract terms, and provide for sanctions and penalties as appropriate.
- (2) All contracts in excess of ten thousand dollars shall provide for termination by the town including the manner in which it will be done and the basis for settlement. The termination clauses shall be for default as well as because of circumstances beyond the control of the contractor.
- (3) Contracts and subcontracts in excess of ten thousand (\$10,000) dollars shall include provisions which require compliance with Executive Order 11246, Equal Opportunity, as amended by Executive Order 11375, and as supplemented in DOL regulations (41 CFR Part 60).
- (4) All contracts and subcontracts in excess of ten thousand (\$10,000) dollars for construction or repair shall include a provisions for compliance with the Copeland "Anti-Kick-Back" Act (18 USC 874) as supplemented by DOL regulations (29 CFR Part 3).
- (5) All contracts or subcontracts in excess of two thousand (\$2,000) dollars for construction or repair shall include a provision for compliance with the Davis-Bacon Act (40 USC 276a to a-7) as supplemented by DOL regulations (29 CFR Part 5).
- (6) All contracts or subcontracts in excess of two thousand (\$2,000) dollars for construction or repair shall include a provision for compliance with Sections 103 and 107 of the federal Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by DOL regulations (29 CFR Part 5).
- (7) Each contract shall include a notice of state requirements and regulations pertaining to reporting and patent rights under any contract involving respect to any discovery or invention which arises or is developed in the course of or under such contract, and of the state requirements pertaining to copyrights and rights in data.
- (8) All negotiated contracts except for those awarded under small purchase procedures shall include a provision that makes it possible for the town, HUD, and the comptroller general of the United States, or any of their duly authorized representatives, to have access to any books, documents, papers, or records of the contractor/firm which are directly pertinent to the contract, for the purpose of making audit examination excerpts and transcriptions. Further, the contract must include a provision that all required records will be maintained by the contractor/firm for a period of three years after the town formally closes out its LCDBG program.
- (9) All contracts, subcontracts and subgrants in amounts in excess of one hundred thousand (\$100,000) dollars shall contain a provision which requires compliance with the requirements of Sections 306 and 508 of the Clean Air Act (42 USC a857 (h) and 33 USC 1368), and Environmental Protection Agency Regulations (40 CFR Part 15).
- (10) Contracts shall recognize mandatory standards and policies relating to energy

efficiency which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act (P.L. 94-164).

- (11) The town will be permitted to require changes, remedies, changed conditions, access and record retention, and suspension of work clauses approved by the state. (Motion adopted October 11, 1994)

### **Section 29.7 Contract administration**

The town shall maintain contract administration systems which insure that contractors/firms perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders. The accepted performance of contractors/firms will be a factor in subsequent contract negotiations and award. Remedial action by the town through legal processes shall be considered in instances of identified significant nonperformance. (Motion adopted October 11, 1994)